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Book Reviews: Copyright Handbook

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COPYRIGHT HANDBOOK. By Donald F. Johnston.* R. R. Bowker Co., New York, New York. 1978. Pp. 309. Reviewed by Joseph Scafetta, Jr.†

In the Preface to *Copyright Handbook*, Mr. Johnston states that "[t]he purpose of this book is to explain the new copyright law and its complexities. It has been designed in an effort to offer a general understanding of the law and to provide an accessible format in which specific information can be expeditiously located" (p. xiii). Mr. Johnston has carried out his purpose. He writes in an easily readable style, and he has explained the complexities of the new law in a very understandable manner.

Johnston also states that "[t]he volume is intended primarily for use by publishers, librarians, educators, and authors who regularly, or from time to time have need for direct access to information about the new law" (p. xiv). That this volume is written for laypersons is certain. The book "is also intended as a convenient source for attorneys when their particular information needs do not require exhaustive or more focused works, such as treatises . . ." (p. xiv). This reference to attorneys is impliedly limited to the general practitioner who deals only occasionally with copyright matters and is not intended to include copyright attorneys and law students. A copyright specialist would need a more exhaustive and focused work.

Even though this work does not attempt to approach the four volume treatise authored by Melville B. Nimmer, Johnston does touch all bases, albeit very lightly on some subjects. In most cases, however, not much more than a sentence or two can be said and, therefore, what might appear to be a superficial treatment upon first impression turns out to be all that there is to say. For example, although the section on "Short Phrases, Titles, Trademarks" (p. 19) is, to say the least, short — only two sentences to be exact — it is sufficient for the layperson and the general lawyer.

Johnston begins his introductory chapter with a brief comparison of the old 1909 copyright law with the new 1976 copyright law,¹ which did not become totally effective until January 1, 1978. The author points out pertinent similarities and differences between the two statutes. He then asks some basic questions that a newcomer to the copyright field would ask, such as "[d]o I have to publish my work to have federal copyright protection?" (p. 3). Thereafter, he sets forth some quite simplistic answers. For example, his response to the

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1. 17 U.S.C. §§ 101 *et seq.* (1976).

above-quoted question is merely "No" plus citation to the applicable sections of the copyright law. Johnston then proceeds to give a general overview of copyright standards and user rights. He concludes the introductory chapter by briefly discussing about a half dozen unresolved copyright issues.

He then moves on to more weighty matters such as copyrightable subject matter, notices, deposit copies for the Library of Congress, and registration. The pace of the book slows down a bit as the author makes a detailed discussion of copyright ownership, transfers, and licenses.

The Preface states that "[t]he book relates only to the new copyright law. Foreign copyright laws and U.S. and foreign laws in other fields (e.g., antitrust, patents, trade secrets, contracts) are not within its scope, although they are referred to . . ." (p. xiv). They are indeed briefly referred to in the chapter on the exclusive rights of copyright because they are especially relevant to any analysis of such rights. Johnston then discusses copyright infringement remedies, copyright duration, and international considerations.

Thereafter, he delves deeply into the subjects of fair use and library reproductions. These topics were hotly debated at the hearings before both subcommittees of the Senate and House Judiciary Committees. They were also extensively analyzed by both subcommittees in their separate reports² and in a joint conference report³ that attempted to present a balanced compromise among the warring special interest groups. The different public policies proffered by these groups were weaved together into two complex sections of the new copyright law by Congress but Johnston follows the threads very nicely in two of the longer chapters in the book.

Johnston then discusses the limits on exclusive performance and display rights and winds up by detailing compulsory licenses. This last topic is all-important to the lucky few who are successful in the industries of musical recording, jukebox performances, public broadcasting, and cable television.

At this point, the reader reaches page 121, which is the place where he or she has had a finger stuck throughout the reading of the text in order to mark the location of the footnotes. To the person who has the good habit of reading every footnote of a book, the constant turning back and forth of the pages from text to notes may be somewhat unnerving.

Putting the placement of the footnotes aside, it should be pointed out that the author has provided one very helpful guide to all

2. See S. REP. NO. 473, 94th Cong., 1st Sess. (1975); H. R. REP. NO. 1476, 94th Cong., 2d Sess. (1976).

3. H. R. REP. NO. 1733, 94th Cong., 2d Sess. (1976).

readers, and in particular to general attorneys, by bracketing the pertinent section of the new law at almost *every* paragraph in the text in order to give one a ready reference to the part of the new law that forms the basis for *each* statement by the author. Thus, Johnston stays close to the law and leaves the pontificating to the treatise writers and the law review contributors.

After 120 pages of text and seven pages of footnotes, the reader comes to the first of 170 pages of appendices. The first appendix is a lithographic copy of the 60-page text of the 1976 Copyright Act prepared in fine print by the United States Government Printing Office.⁴ Since the 300-plus page *Copyright Handbook* retails for about \$15.00, the purchaser is paying about a nickel a page, that is, \$3.00 for the 60-page text of the act, which may be obtained free from the Copyright Office. If the text of the act were omitted from the book, it would be easy for an attorney who works in the Crystal City section of Arlington, Virginia to walk over to the Copyright Office to pick up a free copy of the act. The general practitioner in Pleasanton, California, or Anadarko, Oklahoma, may prefer, however, to plunk down the extra \$3.00 to buy a \$14.95 hardbound volume of *Copyright Handbook* rather than wait weeks for delivery from the Copyright Office via the United States Postal Service.

The second appendix is a lithographic copy of the 25-page text of the 1909 Copyright Act with the amendments made up to the passage of the new act in 1976 tacked on at the bottom of the appropriate page or at the end of the text. Appendix 8 is a collection of all new copyright registration application forms reduced in size. Four of the remaining six appendices are reprints of selected guidelines, circulars, and regulations from the Copyright Office. Only appendices 6 and 7, containing a table of statutory limits on the scope of a copyright owner's exclusive rights and cross-reference tables between the old and new laws, respectively, are originally prepared by the author. The latter, however, is excerpted largely from the 1976 House Report.⁵

To the uninitiated, most of these appendices may appear at first glance to be originally prepared materials but apparently the author has taken advantage of the new provision in the copyright law that provides for liberality of registration of works containing compilations⁶ even when much of the material⁷ is lifted intact from government works in which no copyright may reside.⁸ The author is

4. The *Handbook* text includes all typographical errors included in the text of the new act. For example, see the obvious error on page 135, line 40, wherein the term "pair use" appears instead of "fair use."

5. See note 2 *supra*.

6. 17 U.S.C. §§ 101 & 103 (1976).

7. Of the 309 pages in the book, approximately 152 pages are taken from materials issued free by the Copyright Office.

8. 17 U.S.C. § 403 (1976).

not attempting to pull the wool over anyone's eyes, in the event that anyone gets that impression, since he specifically disclaims copyright in a note at the bottom of the page behind the title page for five of the nine appendices. The extraction and reproduction of generally available government materials could have been enhanced if the book had been provided with a pocket in the inside back cover for insertion of new materials that would replace or supplement any outdated material in the hardbound portion of the book. For example, the author points out that Congress established CONTU⁹ with a statutory directive to issue a final report regarding modern data processing, such as the utilization of computer software, and reproduction technology, such as xerographic machines, by the end of July, 1978 (p. 12). Congress has also directed¹⁰ the Register of Copyrights to issue a report on the implementation of the library reproduction provisions of the new copyright law by January, 1983 (p. 13). As soon as these reports are issued and new regulations are promulgated, *Copyright Handbook* will need updating or at least supplementation if it is to remain accurate, valuable; and useful. Otherwise, this volume, which was released by the publisher-employer of the author on April 7, 1978, may have a useful life of only about five years.

Although the price for this book includes much freely available material and although the book may ultimately have a short, useful life, it is a good explanation of the new copyright law for laypersons and general practitioners to use in the immediate future.

9. National Commission on New Technological Uses of Copyrighted Works.

10. 17 U.S.C. § 108(i) (1976).